

108TH CONGRESS
1ST SESSION

H. R. 1220

To prohibit pyramid promotional schemes, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

MARCH 12, 2003

Mr. BARTON of Texas (for himself, Mr. HALL, Mr. FROST, Mrs. MYRICK, Mr. ENGLISH, Ms. PRYCE of Ohio, Mr. SESSIONS, Mr. TIBERI, and Mr. EHLERS) introduced the following bill; which was referred to the Committee on Energy and Commerce

A BILL

To prohibit pyramid promotional schemes, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Anti-Pyramid Pro-
5 motional Scheme Act of 2003”.

6 **SEC. 2. FINDINGS.**

7 The Congress finds the following:

8 (1) Pyramid promotional schemes, chain letters,
9 and related schemes are enterprises—

1 (A) that finance returns to participants
2 through sums taken from newly attracted par-
3 ticipants;

4 (B) in which new participants are prom-
5 ised large returns for their investments; and

6 (C) involve unfair and deceptive sales tac-
7 tics, and lead to the victimization of unwitting
8 individuals.

9 (2) Pyramid promotional schemes, chain letters,
10 and related schemes constitute a threat in interstate
11 commerce and to the financial well-being of the citi-
12 zens of the United States.

13 (3) The advent of the global Internet makes
14 pyramid promotional schemes international threats.

15 (4) The Ninth Circuit Court of Appeals erred
16 in defining a pyramid promotional scheme in Web-
17 ster v. Omnitrition Int'l, Inc. (79 F.3d 776; 9th Cir.
18 1996).

19 **SEC. 3. DEFINITIONS.**

20 In this Act:

21 (1) **APPROPRIATE INVENTORY REPURCHASE**
22 **PROGRAM.**—The term “appropriate inventory repur-
23 chase program” means a program by which a plan
24 or operation repurchases, upon request at the termi-
25 nation of a participant’s business relationship with

1 the plan or operation and based upon commercially
2 reasonable terms, current and marketable inventory
3 purchased and maintained by the participant for re-
4 sale, use, or consumption, and such plan or oper-
5 ation clearly describes the program in its recruiting
6 literature, sales manual, or contracts with partici-
7 pants, including the manner in which the repurchase
8 is exercised, and disclosure of any inventory that is
9 not eligible for repurchase under the program.

10 (2) **COMMERCIALLY REASONABLE TERMS.**—The
11 term “commercially reasonable terms” means the re-
12 purchase of current and marketable inventory within
13 12 months from date of purchase at not less than
14 90 percent of the original net cost to the participant,
15 less appropriate set-offs and legal claims, if any. In
16 the case of service products, the repurchase of such
17 service products must be on a pro rata basis (unless
18 clearly disclosed otherwise to the participant) to be
19 within the meaning of “commercially reasonable
20 terms”.

21 (3) **COMPENSATION.**—The term “compensa-
22 tion” means a payment of any money, thing of
23 value, or financial benefit.

24 (4) **CONSIDERATION.**—The term “consider-
25 ation” means the payment of cash or the purchase

1 of goods, services, or intangible property, and does
2 not include—

3 (A) the purchase of goods or services fur-
4 nished at cost to be used in making sales and
5 not for resale; or

6 (B) time and effort spent in pursuit of
7 sales or recruiting activities.

8 (5) CURRENT AND MARKETABLE.—

9 (A) The term “current and marketable”
10 includes inventory that—

11 (i) in the case of consumable or dura-
12 ble goods, is unopened, unused, and within
13 its commercially reasonable use or shelf-life
14 period; and

15 (ii) in the case of services and intan-
16 gible property, including Internet sites,
17 represents the unexpired portion of any
18 contract or agreement.

19 (B) The term “current and marketable”
20 does not include inventory that has been clearly
21 described to the participant prior to purchase
22 as seasonal, discontinued, or special promotion
23 products not subject to the plan or operation’s
24 inventory repurchase program.

1 (6) INVENTORY.—The term “inventory” in-
2 cludes both goods and services, including company-
3 produced promotional materials, sales aids, and sales
4 kits that the plan or operation requires independent
5 salespersons to purchase.

6 (7) INVENTORY LOADING.—The term “inven-
7 tory loading” means that the plan or operation re-
8 quires or encourages its independent salespersons to
9 purchase inventory in an amount that unreasonably
10 exceeds that which the salesperson can expect to re-
11 sell for ultimate consumption, or to use or consume,
12 in a reasonable time period.

13 (8) PARTICIPANT.—The term “participant”
14 means a person who joins a plan or operation.

15 (9) PERSON.—The term “person” means an in-
16 dividual, a corporation, a partnership, or any asso-
17 ciation or unincorporated organization.

18 (10) PROMOTE.—The term “promote” means
19 to contrive, prepare, establish, plan, operate, adver-
20 tise, or to otherwise induce or attempt to induce an-
21 other person to be a participant.

22 (11) PYRAMID PROMOTIONAL SCHEME.—The
23 term “pyramid promotional scheme” means any plan
24 or operation in which a participant gives consider-
25 ation for the right to receive compensation that is

1 derived primarily from the recruitment of other per-
2 sons as participants in the plan or operation, rather
3 than from the sales of goods, services, or intangible
4 property to participants or by participants to others.

5 **SEC. 4. RULES TO PROHIBIT OPERATING PYRAMID PRO-**
6 **MOTIONAL SCHEME.**

7 (a) IN GENERAL.— Not later than 1 year after the
8 date of the enactment of this Act, the Federal Trade Com-
9 mission shall promulgate a rule under section 18(a) of the
10 Federal Trade Commission Act (15 U.S.C. 57a(a)) pro-
11 viding that it shall be an unfair or deceptive act or practice
12 under section 5 of such Act (15 U.S.C. 45) for any person,
13 by the use of any means or instrumentality of transpor-
14 tation or communication in interstate or foreign com-
15 merce, to promote, offer, sell, or attempt to sell a partici-
16 pation or the right to participate in a pyramid promotional
17 scheme.

18 (b) LIMITATION.—Nothing in this Act or in the rule
19 to be promulgated pursuant to this section shall be con-
20 strued to prohibit a plan or operation, or to define such
21 plan or operation as a “pyramid promotional scheme”,
22 based upon the fact that participants in the plan or oper-
23 ation give consideration in return for the right to receive
24 compensation based upon purchases of goods, services, or
25 intangible property by participants for personal use, con-

1 sumption, or resale, and the plan or operation does not
2 promote inventory loading and implements an appropriate
3 inventory repurchase program.

4 **SEC. 5. STATE ENFORCEMENT.**

5 (a) ACTIONS UNDER STATE LAW.—Nothing in this
6 Act or the Federal Trade Commission Act prohibits an
7 authorized State official from proceeding in State court
8 on the basis of an alleged violation of any civil or criminal
9 statute of such State.

10 (b) ACTIONS UNDER FEDERAL LAW.—The attorney
11 general of any State or territory of the United States may,
12 upon finding any person is engaged or is about to engage
13 in any act or practice that constitutes a pyramid pro-
14 motional scheme in violation of the rule promulgated
15 under section 4, bring an action in the appropriate district
16 court of the United States to enjoin such act or practice
17 and to obtain other appropriate relief. The attorney gen-
18 eral of a State or territory of the United States may seek
19 such relief on behalf of residents of such State or territory,
20 and an authorized Federal official may seek such relief
21 on behalf of residents of all such States and territories.
22 Such court may grant a temporary restraining order, or
23 a preliminary or permanent injunction, or other appro-
24 priate relief.

1 **SEC. 6. NO LIMITATION ON OTHER FEDERAL CLAIMS.**

2 Nothing in this Act or the rule promulgated under
3 it shall limit the authority of any Federal official from pro-
4 ceeding against pyramid promotional schemes for other
5 violations of Federal law.

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